IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 481 OF 2004

MR.MAXIMO J.R. DE SOUZA AND 2 ORS., ...Petitioners

Versus

MR.SHYAMSUNDER L.NAIK AND 4 ORS., ...Respondents

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Iftikhar Agha, Advocate for the petitioners.

Mr. Amrut Kansar, Advocate for the respondents No.1, 2, 3 and 5.

Coram:- R. M. LODHA, J.

Date:- 14th September, 2005

P.C.

In my considered view, the impugned order squarely falls under Order 41, Rule 23-A of the Code of Civil Procedure and, therefore, an appeal lies against the said order under Order 43, Rule 1(u).

Confronted with this difficulty, Mr. M. S. Usgaonkar, the learned Senior Counsel for the petitioners prays for withdrawal of the writ petition with liberty to file an appeal from order.

Mr. A. Kansar, the learned Counsel for the respondents No. 1, 2, 3 and 5 has no objection. In my view, the submission of the learned Senior Counsel for the petitioners is fair and reasonable.

The writ petition is allowed to be withdrawn with liberty as prayed. By way of clarification, it is observed that the period during which the writ petition remained pending before this Court shall be excluded while computing the limitation of the appeal from order.

R. M. LODHA, J.